

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JAMES BORDERS,

Plaintiff,

v.

LEONARD THOMPSON, RDH  
TRUCKING, INC., and  
PROTECTIVE INSURANCE  
COMPANY,

Defendants.

CIVIL ACTION FILE NO.:  
\_\_\_\_\_

**NOTICE OF REMOVAL**

**TO:** Judges of the United States District Court  
Northern District of Georgia, Atlanta Division

Pursuant to 28 U.S.C. § 1441 *et seq.*, Defendants Leonard Thompson, RDH Trucking, Inc., and Protective Insurance Company (hereinafter “these Defendants”) hereby remove the civil action captioned *James Borders v. Leonard Thompson, RDH Trucking, Inc., and Protective Insurance Company*, State Court of Fulton County, Civil Action File No. 23EV004004 from the State Court of Fulton County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division. Removal is based upon the following:

**Removal Based on Diversity Jurisdiction**

1. This Court has original jurisdiction of this matter pursuant to 28 U.S.C. § 1332 and this matter may be removed to this Court under 28 U.S.C. §§ 1441 and 1446.

**Description of the Action**

2. On July 5, 2023, Plaintiff filed a Complaint against these Defendants alleging negligence related to a motor vehicle accident that occurred on or about July 21, 2022, in Fulton County, Georgia. *See generally*, Plaintiff's Complaint (Exhibit "A").

**Consent for Removal**

3. The procedure for removing a case to Federal Court is codified in 28 U.S.C. § 1446 and requires that "all defendants who have been properly joined and served" consent to the removal. 28 U.S.C. § 1446(b)(2)(A) (emphasis added); *Cook v. Randolph County, Ga.*, 573 F.3d 1143, 1150 (11th Cir. 2009); *Tri-Cities Newspaper, Inc. v. Tri-Cities Printing Pressmen and Assistants' Local 349*, 427 F.2d 325, 326-27 (5th Cir. 1970).

4. These Defendants consent to the removal of this Action through undersigned counsel.

5. These Defendants, which are the only defendants properly joined and served within the meaning of 28 U.S.C. § 1446, file the Notice of Removal of this Action.

### **The Amount in Controversy Requirement**

6. In diversity cases, 28 U.S.C. § 1332(a) requires that the matter in controversy exceed the sum or value of \$75,000.

7. In Plaintiff's Complaint, he seeks to recover damages for personal injury, past and future pain and suffering, general damages, and unspecified special damages. *See Plaintiff's Complaint ¶ 40 & 41.* Plaintiff's Complaint is silent as to the amount of damages sought.

8. Pursuant to O.C.G.A. § 9-11-67.1, Plaintiff made a Holt Demand to Defendant Protective Insurance Company for its policy limits of \$1,000,000 on January 13, 2022. See Exhibit "H".

9. Thus, the amount in controversy has been established by a preponderance of the evidence pursuant to 28 U.S.C. § 1446(c)(2)(A)-(B) as shown by Plaintiff's Holt Demand to Defendant Protective Insurance Company.

### **The Diversity of Citizenship Requirement**

12. For diversity jurisdiction under 28 U.S.C. § 1332(a)(1), the parties must be citizens of different states.

13. Upon information and belief, Plaintiff is a resident and citizen of the State of Georgia and is entirely diverse from these Defendants. Plaintiff's Complaint alleges he is a resident of the State of Georgia. *See* Plaintiff's Complaint ¶ 1. According to the police report, Plaintiff is a resident of Austell, Georgia. *See* Motor Vehicle Crash Report, attached as Exhibit "G". These Defendants have no information indicating Plaintiff is a citizen of any state other than Georgia.

14. Defendant Leonard Thompson is a resident and citizen of the State of Florida and is entirely diverse from Plaintiff. Plaintiff's Complaint ¶ 2; Defendants' Answer ¶ 2, attached as Exhibit "B".

15. Defendant RDH Trucking, Inc., is an interstate carrier with a US DOT Number 1106515 with its state of incorporation and principal place of business being the State of Florida and is, therefore, a citizen of Florida. Defendant RDH Trucking, Inc., is entirely diverse from Plaintiff. See Plaintiff's Complaint ¶ 3; Defendants' Answer ¶ 3.

16. Defendant Protective Insurance Company is a resident and citizen of the State of Indiana, and is therefore, a citizen of Indiana. Defendant Protective Insurance Company is entirely diverse from Plaintiff. See Plaintiff's Complaint ¶ 4; Defendants' Answer ¶ 4; Plaintiff's Holt Demand attached as Exhibit "H".

### **Compliance with Deadline for Removal**

16. Pursuant to 28 U.S.C. §1446(b)(3), “if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may be first ascertained that the case is one which is or has become removable.”

17. Here, no amount was prayed for in Plaintiff’s Complaint. *See generally* Complaint.

18. These Defendants have initiated removal within 30 days of receipt of a paper indicating that the amount in controversy requirement was met and the case had become removable. Based on 28 U.S.C. §1446(b)(3) this Notice of Removal is timely filed.

### **The State Court Proceeding**

19. The state court proceeding is identified as follows: *James Borders v. Leonard Thompson, RDH Trucking, Inc., and Protective Insurance Company*, State Court of Fulton County, Civil Action File No. 23EV004004. A Notice of Removal will be filed with the State Court of Fulton County upon filing of this Notice of Removal pursuant to 28 U.S.C. § 1446(d).

## All State-Court Documents

20. Pursuant to 28 U.S.C. § 1446(a), the following state-court filings are attached hereto: Plaintiff's Complaint (Exhibit "A"); Defendants' Answer to Plaintiff's Complaint (Exhibit "B"); Summons to Defendant Leonard Thompson (Exhibit "C"); Summons to Defendant RDH Trucking, Inc. (Exhibit "D"); Summons to Defendant Protective Insurance Company (Exhibit "E"); Affidavit of Service on Defendant Protective Insurance Company. (Exhibit "F"); Written discovery requests served by Plaintiff have not been attached for the sake of brevity.

**WHEREFORE**, these Defendants exercise their right under the provisions of 28 U.S.C. § 1441, *et seq.* to remove this action from the State Court of Fulton County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 9th day of August, 2023.

**NALL & MILLER, LLP**

By: /s/ Michael D. Hostetter  
**MICHAEL D. HOSTETTER**  
Georgia Bar No. 368420  
**LASHAWNDA M. SAMPSON**  
Georgia Bar No. 577242

**ATTORNEYS FOR DEFENDANTS**  
**LEONARD THOMPSON, RDH**  
**TRUCKING, INC., and PROTECTIVE**  
**INSURANCE COMPANY**

**CERTIFICATE OF COMPLIANCE WITH N.D. GA. LOCAL RULE 5.1B**

This is to certify that this pleading was created in Times New Roman 14-point font in accordance with Northern District of Georgia Local Rule 5.1B.

This 9<sup>th</sup> day of August, 2023.

**NALL & MILLER, LLP**

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**ATTORNEYS FOR DEFENDANTS**  
**LEONARD THOMPSON, RDH**  
**TRUCKING, INC., and PROTECTIVE**  
**INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a copy of the within and foregoing **NOTICE OF REMOVAL (Federal)** which has been served electronically by operation of the Court's electronic filing system using the **CM/ECF System** to the following attorney of record listed below:

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*Attorney for Plaintiff*

This 9<sup>th</sup> day of August, 2023.

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